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Customer No.: 07278
PATENT TRADEMARK OFFICE

Docket No: 1313/1F022-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Harding et al.

Serial No.: ~~09/577,804~~ 09/557 804

Art Unit: 1623

Confirmation No.: 8941

Filed: April 25, 2000

Examiner: E. White

For: CELLULOSE ETHERS AND METHOD OF PREPARING THE SAME

REQUEST FOR REINSTATEMENT OF THE APPEAL

Hon. Commissioner of
Patents and Trademarks
Washington, DC 20231

Sir:

Pursuant to 37 C.F.R. §1.193(b)(2)(ii), applicants request reinstatement of the appeal of the rejection of claims 39 and 60-63 in the above-identified patent application. A Notice of Appeal was filed on November 15, 2002 to appeal the final rejection of claims 39 and 60-63 as obvious over European Patent Publication No. 879,827 (EP '827). An Appeal

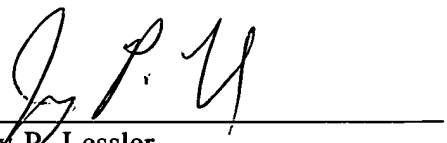
Brief was filed January 15, 2003. On April 4, 2003, a non-final Office Action was issued stating that the appeal was being held in abeyance.

In the Office Action, the rejection of claims 39 and 60-63 as obvious over EP '827 was withdrawn. Claims 39 and 60-63 were instead rejected as anticipated by EP '827. The argument presented in the Office Action is identical to that spanning pages 3 and 4 of the September 23, 2002 Office Action. The April 4, 2003 Office Action fails to address any of the arguments raised in the Appeal Brief.

The only difference between the outstanding rejection and the prior rejection is that the claims are rejected as anticipated by rather than obvious over EP '827. The Examiner could have pursued an anticipatory argument on appeal without issuing a non-final Office Action and holding the appeal in abeyance. Since anticipation is the ultimate of obviousness, if a prior art reference anticipates a reference, it also renders it obvious. See *In re Baxter Travenol Labs*, 21 USPQ2d 1281, 1284-5 (Fed. Cir. 1991) ("[S]ince anticipation is the ultimate of obviousness ..., the subject matter of these claims is necessarily obvious and we need not consider them further.") (citing *In re Fracalossi*, 215 USPQ 569, 571 (CCPA 1982)); *In re Paulsen*, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994). As such the applicants are vexed as to why an Office Action was issued rather than an Examiner's Answer.

For these reasons, applicants request reinstatement of the appeal. Accompanying this request is a Supplemental Appeal Brief.

Respectfully submitted



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